LAI SENG EQUIPMENT PTE. LTD. & ANOR.

v.

C. ITOH & CO. LTD.

COURT OF APPEAL, SINGAPORE
TS SINNATHURAY J
LP THEAN J
FA CHUA J
[CIVIL APPEAL NO. 62 & 68 OF 1983]
28 AUGUST 1984

CONTRACT: *Claim for price of goods supplied - Final judgment order - Application for a stay order - Appeal against Deputy Registrar's orders - Acknowledgment of indebtedness - Whether there was late delivery of goods.*

The respondents commenced an action against the 1st appellants as the principal and the 2nd appellant as guarantor/surety, claiming for the sum of US$719,700.48 being the price of 854 pieces of pipes delivered to the 1st appellants. The respondents applied for a final judgment order against both the appellants for the above amount. Meanwhile the appellants applied for a stay of all further proceedings pursuant to s. 7 of the Arbitration Act (Cap. 16).

The Deputy Registrar dismissed the appellant's application with costs and ordered that final judgment be entered against both the appellants for the sum and costs. The appellants appealed against both the orders of the Deputy Registrar. The learned Chief Justice who heard both the appeals, dismissed them with costs, therefore this appeal.

Held:
There was no question of late delivery as the contract only required shipment ex-Japan end of November 1982, which the respondents had already complied with. Therefore the allegation that the respondents were liable for delay in delivery cannot be sustained. In fact the appellants had acknowledged their indebtedness and had requested for extension of time to make payment.

[Appeal dismissed with costs.]

Legislation referred to:
Arbitration Act (Cap 16) [Sing], s. 7

JUDGMENT

TS Sinnathuray J, LP Thean J, FA Chua J:

The respondents, C. Itoh & Co. Ltd., commenced an action in the High Court claiming against the first appellants, Lai Seng Equipment Pte. Ltd., as principal and against the second appellant, Kwok Fook Leong, as surety, the sum of US $719,700.48 being the price of goods sold and delivered by the respondents to the first appellants on the guarantee by the second appellant in writing dated 18 November 1982.

The first and second appellants applied to the Court by way of Summons-in-Chambers No. 3825 of 1983 for an order that all further proceedings in this action be stayed pursuant to s. 7 of the Arbitration Act (Cap. 16).

The respondents applied by way of Summons-in-Chambers No. 3402 of 1983 for an order that final judgment be entered against both the appellants for the sum of US$719,700.48 and interest.

On 8 August 1983, the Deputy Registrar dismissed the appellants' application with costs.

On 15 August 1983, the Deputy Registrar ordered that final judgment be entered against both the appellants for the sum of US $719,700.48 and costs.

The appellants appealed to Judge in Chambers against the Deputy Registrar's order of 8 August 1983, and 15 August 1983.

The appellants' appeals were heard by the learned Chief Justice and both appeals were dismissed with costs.

At the conclusion of the appeals by the appellants against the orders of the learned Chief Justice, we dismissed the appeals with costs. We now proceed to give our reasons.

The respondents based their claim on Sales Order No. SIN-11-0999 dated 18 November 1982. Clause 9 of the General Terms and Conditions of the Sales Order provides:

> All disputes controversies, or differences which may arise between Buyer and Seller, out of or in relation to or in connection with this contract, or for the breach thereof, shall be settled by arbitration in Singapore in accordance with the Arbitration Ordinance of the Republic of Singapore or any statutory modification thereof. The award shall be final and binding upon both parties.

The second appellant was the General Manager of the first appellants.

The goods of the Sales Order consisted of 672 pieces of bare pipes bearing dimensions 600mm x 12mm x 12m and 182 pieces of bare pipes bearing dimensions 500mm x 12mm x 12m. Out of these, from the 672 pieces of bare pipes, 166 pieces were to be coated by epoxy by the respondents and out of the 182 pieces, 93 pieces were to be so coated by the respondents.

The coating of the pipe poles were carried out by the respondents at Batu Ampar, Batam Island.

The first appellant's contentions were these. The pipes were to be shipped ex-Japan at the end of November 1982 and to be delivered to the first appellants, including those to be coated, by the end of December 1982. The respondents represented to the first appellants that if the pipes were shipped ex-Japan by the end of November 1982 the entire lot of pipes, including those to be coated by the respondents at Batam Island, could be delivered to the first appellants before the end of December 1982. On this understanding that the pipes (including those to be coated) would be delivered to the first appellants before the end of December 1982, and not otherwise, the first appellants agreed to purchase the goods from the respondents. However, the respondents in breach of the contract failed to deliver all the pipes on time as agreed by the end of December 1982. It was only on 29 January 1983, that all the pipes (including the ones to be coated) were delivered. The respondents well knew that the pipes were required for a jetty project in Sekupang, Batam Island and that the coated pipes were required for marine piling works and without these pipes the other pipes could not be used. As a result of the delay in delivery in breach of the contract the first appellants had suffered loss and damage for which the respondents were liable. The respondents and the first appellants had had several meetings to resolve the dispute. The first appellants had pointed out that should they get fully paid by the Indonesian party with whom they entered into the jetty project they would be happy to pay the respondents although the respondents had been in breach. At one point it was hoped that the said Indonesian party would pay by

19 April 1983, and the first appellants agreed to pay the respondents when the money was received. But this was not to be and no money was forthcoming. The Indonesian party had refused to pay on account of the said delay which had caused a chain of reaction in the entire project.

The first appellants contended that there were matters of dispute. The dispute being whether there was delay in the delivery of the goods purchased and the question of damages payable by the respondents to the first appellants on account of the delay.

The contract between the first appellants and the respondents was evidenced by two documents - the Sales Order No. SIN-11-0999 of the respondents and the Purchase Order No. 0103 of first appellants. In the Sales Order only the shipment date was mentioned - "Shipment: Bare pipe Ex-Japan end November 1982. Delivery Point: Batam." No delivery date was mentioned. Only the shipment date was mentioned in the first appellants' own Purchase Order - "Shipment: Bare pipe Ex-Japan end November 1982". Again no delivery date was mentioned. If the first appellants were concerned about the delivery date why was it not mentioned in their Purchase Order?

The pipes were in fact shipped ex-Japan by the end of November 1982. That was not in dispute. In their letter of 18 December 1982, to the respondents the first appellants expressed a doubt that the pipes to be coated would be ready and duly delivered to Sekupang within two weeks, but there was no complaint of late delivery. Again in their telex to the respondents to speed up the delivery of the balance of the coated pipes there was no complaint by the first appellants of late delivery. It was only in his affidavit of 24 June 1983, in support of the appellants' application for stay that the second appellant alleged that there was late delivery.

On the material before us the appellants' allegation that the respondents were liable for delay in delivery cannot be sustained. The respondents had complied with the contract in shipment of the goods ex-Japan at the end of November 1982. There was no question of late delivery as the contract only required shipment ex-Japan end of November 1982.

There was no outstanding dispute whatsoever between the respondents and the appellants pertaining to the contract and the amount owing and payable was also not in dispute.

By letter dated 15 April 1983, signed by the second appellant as General Manager, the first appellants had acknowledged their indebtedness to the respondents and had requested for extension of time to make payment to 19 April 1983, due to the delay of payment from the Indonesian party. The first appellants failed to pay and the respondents' solicitors had on 5 May 1983, and 6 May 1983, served on both the appellants two separate letters of demand but they had never at any time raised any objections thereto.

The first appellants' liability to the respondents under the contract was not dependent or subject to their being paid by the Indonesian party.

By a telex of 13 June 1983, sent by the second appellant after the commencement of the suit the first appellants had openly admitted that they were unable to pay the outstanding debt. There was no question that there was a dispute to be arbitrated.

For these reasons we dismissed the appeals with costs.

Also found at [1984] 2 CLJ 130